In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 623

DOUGLAS LANTZ, d/b/a ALASKA TRUCK TRANSPORT, INC., APPELLANT

v.

LYNDEN TRANSFER, INC. AND NORTH AMERICAN VAN LINES, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

MEMORANDUM FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

This appeal seeks reversal of a decision of a three-judge district court (reported at 263 F. Supp. 336; J.S. App. A), setting aside the order of the Interstate Commerce Commission in *Alaska Truck Transport, Inc., Extension-Alaska*, 99 M.C.C. 668, and remanding the case for further proceedings. The Commission's order granted appellant, a motor common carrier, the authority to transport general commodities, including household goods, between points in Alaska and both Seattle, Washington, and Great Falls, Montana. This order was issued on reconsideration by the full Commission of a ruling by the Operating Rights Review

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Board (an employee board authorized by 49 U.S.C. 17(5)) which had denied appellant authority to transport household goods between Alaska and Seattle and Great Falls, and general commodities between Alaska and Seattle, although permitting it to transport commodities other than household goods between Alaska and Great Falls.

Appellees Lynden Transfer, Inc. and North American Van Lines, Inc., protestants in the ICC proceeding, filed an action in the United States District Court for the Western District of Washington to set aside the Commission's order. They contended (1) that the Commission was without authority to reopen the proceedings for reconsideration upon its own motion once the appellate division had upheld the Operating Rights Review Board, and (2) that, in any event, there was no substantial evidence to support the Commission's order.

Although it referred to appellees' first argument as "prepotent," the court found it unnecessary to resolve that issue since it "conclude[d] that there was no substantial evidence adduced at the hearing to support the finding that there was a need for the services of applicant which are here being challenged." (J.S. App. A, (c)-(d).)

The basic question presented by the Jurisdictional Statement is whether the district court correctly determined that there was no substantial evidence to support the Commission's finding of a need for the applicant's services.[1] The court below recognized the

[1] In concluding that the Commission's determination was not supported by substantial evidence, the district court held that in the context of this application the Commission was not en-

proper standard of review (see *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 618-621), and appellant questions basically the application of that standard to the facts of this particular record. While we took the position below that the Commission's determination was supported by substantial evidence, we believe the issue is a close one. Neither the Commission nor the United States filed an appeal. In our view, the narrow question of the substantiality of the evidence does not warrant plenary review by this Court.[1]

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titled to consider appellant's evidence of his prior transportation of household goods, on the ground that these services were unauthorized and in willful disregard of law.

[1] Furthermore, on remand the Commission reopened the proceeding. A further hearing was held in Anchorage on July 18, and the matter is presently pending before the examiner. Thus, appellant has been afforded an opportunity to build a record, to remedy the deficiencies which the court below found, and to adduce support for some of the allegations contained in his jurisdictional statement but which are not founded on anything in the administrative record which the district court was called upon to review.

The appellant has filed a "Motion for Intervention, Joinder and Amendment of Name of Parties." The motion (p. 3) also appears to request that additional evidence, some of which was before the Commission in a related proceeding but not before the court below, be made part of the record in this Court. In view of our suggestion that this case does not warrant plenary review by this Court, we believe this motion should be denied. Even if the Court decides to hear the case, only the record before the district court should be the basis for review.

Insofar as the motion requests that the name of the appellant be changed to "Douglas Lantz, d/b/a Alaska Truck Transport, Inc." and that Lantz be allowed to proceed *pro se*, we have no objection to the motion.

We also note certain apparent defects in docketing this case which may warrant dismissal of the appeal. The opinion of the district court was filed February 9, 1967, and its judgment entered March 16, 1967. On May 15, 1967, appellant Lantz filed a "Motion for Extension of Time for Filing Appeal or, in the Alternative, Notice of Appeal." Lantz also filed a motion for a new trial. On June 9, 1967, the district court denied the motions for a new trial and for an extension of time for filing a notice of appeal. Although the May 15 motion was alternatively captioned a notice of appeal, it does not appear to comply with the Rules of this Court then in effect with respect to a notice of appeal, in that it fails to specify the questions presented by the appeal as required by Rule 10, paragraph 2(c). Furthermore, on July 18, 1967, an order was entered by Mr. Justice Fortas extending the time for docketing this appeal until August 13, 1967, but the case was not docketed until September 15, 1967.

For these reasons, we believe that summary affirmance of the district court's order or dismissal of this appeal would be appropriate.

RALPH S. SPRITZER,
Acting Solicitor General.

ROBERT W. GINNANE,
General Counsel,
Interstate Commerce Commission.

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